

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR 316/2023 (O&M)

Date of decision: 18.01.2023

Rajwinder Singh @ Kala and others

.....Petitioners

Vs.

Kirpal Dass

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Daljeet Singh Virk, Advocate for the petitioners.

Nidhi Gupta, J.

Present revision petition has been filed by the petitioners/defendants for setting aside the impugned order dated 21.11.2022 (Annexure P-5) passed by the Id. Additional Civil Judge (Senior Division) Mansa, whereby petitioners' application dated 5.8.2022 (Annexure P-4) for treating the issue of jurisdiction as preliminary issue has been dismissed.

It has been *inter alia* submitted by the learned counsel for the petitioners that suit land has been used by the petitioners as *Pahi*/passage since last 20-30 years, and the same was also reflected in the revenue record of the village. However, now respondent/ plaintiff had filed a suit for permanent injunction against the petitioners claiming ownership of half of the suit land, and alleging encroachment by the petitioners on the suit land. It is submitted that as the suit land is *Gair pahi*/ passage and is used by the petitioners as approach to their house, therefore, the present dispute falls under Section 7 of the Punjab Village Common Land Act, 1961, and therefore, the jurisdiction is with the District Development and Panchayat Office (DDPO). It is submitted that accordingly, the petitioners had filed application dated 5.8.2022 (Annexure P-4)

that the issue of jurisdiction be treated as preliminary issue and decided first. However, vide impugned order, Ld. Trial Court has dismissed the said application.

Learned counsel refers to Annexure P-6 which is copy of Jamabandi for the year 2015-16 wherein the said passage has been shown as *Gair Mumkin Abadi* and submits that this Jamabandi P-6 was done at the back of the petitioners and without notice to the petitioners/ affected parties and therefore, cannot be relied upon.

Heard Ld. counsel.

A perusal of Annexure P-6, which is copy of Jamabandi for the year 2015-16 reveals that the suit land is depicted as *Gair Mumkin Abadi* therein. It has further been clarified therein that while recording in the computerized Jamabandi for the year 2010-11, suit land has been wrongly mentioned as *Gair Pahi* as “838//2(1-3) *Gair Pahi* 838//1 (0-12)”; and therefore, permission was sought for correcting the said entry as *Gair Mumkin Abadi* in respect of the suit land which was duly sanctioned, and correction was made in the record vide Correction 94.

Be that as it may, further perusal of the record of the case shows that Notice was issued in the suit on 9.3.2020, and the petitioners had filed written statement on 10.3.2021. Matter was delayed due to Corona, and thereafter on basis of the pleadings of the parties, the following issues were framed by the Ld. Trial Court vide order dated 8.3.2022:

1. Whether the plaintiff is the owner of the ½ share of the suit property as fully detailed in the head note of the plaint and is entitled to the possession of the same? OPP
2. Whether the suit of the plaintiff is within period of limitation? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD

4. Whether the suit of the plaintiff is bad for non-joinder of necessary parties? OPD
5. Whether the suit of the plaintiff is bad for non-affixation of ad valorem court fees? OPD
6. Whether the defendants have become the owners of the suit property by virtue of adverse possession? OPD
7. Relief

Thereafter, an application moved by the petitioners for framing of additional issue regarding jurisdiction. The Ld. Trial Court vide order dated 15.7.2022 allowed the said application, and reframed the issues as follows:-

1. Whether the plaintiff is the owner of the ½ share of the suit property as fully detailed in the head note of the plaint and is entitled to the possession of the same? OPP.
2. Whether the suit of the plaintiff is within period of limitation? OPP.
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
4. Whether the suit of the plaintiff is bad for nonjoinder of necessary parties? OPD
5. Whether the suit of the plaintiff is bad for non-affixation of ad valorem court fees? OPD 6.
6. Whether the defendants have become the owners of the suit property by virtue of adverse possession? OPD
7. Whether this Court has no jurisdiction to try the present suit? OPD.
8. Relief.

It is now for the third time that an application dated 5.8.2022 has been filed by the petitioners praying that issue of jurisdiction be treated as a preliminary issue. However, admittedly, trial has already commenced. Respondent/plaintiff has already been examined in-chief. Also, issues were framed on the basis of the pleas taken by the petitioners in their written statement to the suit. Thereafter, the issues were again reframed/recast vide order dated 15.7.2022, at the asking of the petitioners, and issue of jurisdiction is included.

Accordingly, I find that that prima facie no ground is made out to interfere with the impugned order. The revision petition stands dismissed.

However, nothing stated above, shall be taken as an expression
of opinion on the merits of the case.

(Nidhi Gupta)
Judge

18.01.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No